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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

E. LYNN SCHOENMANN,

Debtor.

BK Case No.: 22-30028-DM

Chapter 7

STUART SCHOENMANN, as Executor of
the Probate Estate of Donn R. Schoenmann,

Plaintiff,

v.

E. LYNN SCHOENMANN, an individual,

Defendant.

AP Case No.: 22-3105-DM

**MOTION FOR RECONSIDERATION OF
MEMORANDUM DECISION REGARDING
CONSOLIDATED ADVERSARY
PROCEEDINGS AND REMAINING MAJOR
ISSUES IN BANKRUPTCY CASE AND
ISSUANCE OF RELATED ORDERS**

Date: October 17, 2025

Time: 10:00 a.m.

Location: 450 Golden Gate Ave., Ctrm. 17
San Francisco, California 94203

Judge: Honorable Dennis Montali

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AP CASE NO. 22-3105-DM

MOTION FOR RECONSIDERATION OF MEMORANDUM DECISION REGARDING CONSOLIDATED ADVERSARY PROCEEDINGS
AND REMAINING MAJOR ISSUES IN BANKRUPTCY CASE AND ISSUANCE OF RELATED ORDERS



1 Defendant E. Lynn Schoenmann (“Debtor” or “Defendant”) hereby moves (the
2 “Motion”) for reconsideration of the *Memorandum Decision Regarding Consolidated Adversary*
3 *Proceedings and Remaining Major Issues in Bankruptcy Case* (the “Memorandum Decision”)
4 [Dkt. No. 60] and the related *Order Abstaining from Deciding Consolidated Adversary*
5 *Proceedings, Dismissing Them and Granting Relief from Stay* (the “Order”) [Dkt. No. 61] issued
6 by the Court in the above-captioned matter.

7 The Motion is based upon the Notice of Motion, the supporting memorandum of points
8 and authorities set forth herein, the supporting Declaration of Jay D. Crom, CPA (“Crom Decl.”)
9 and all exhibits attached thereto, the supporting Request for Judicial Notice (“RJN”) and all
10 exhibits attached thereto, all other pleadings on file herein, and such other and further arguments
11 and authority as may be presented at the hearing on the Motion.

12 **I. INTRODUCTION**

13 Given the contentious history of this Bankruptcy Case, it is understandable that this Court
14 now wishes to abstain and decline to adjudicate all remaining issues between Defendant and the
15 Probate Estate, and instead, allow the Probate Court to resolve all remaining disputes. Although
16 Defendant strongly disagrees with this approach, this Court does not have subject matter
17 jurisdiction to order the forced liquidation of Defendant’s ERISA-qualified Profit-Sharing Plan,
18 as the Supreme Court in Patterson v. Shumate, 504 U.S. 753 (1992) specifically recognized this
19 retirement account is not property of the estate and not available to creditors.

20 Further, although there are significantly less intrusive alternatives to the forced
21 liquidation of the Profit-Sharing Plan, which will result in tax liability to Defendant or the
22 Bankruptcy Estate in an amount not less than \$167,112, this Court declined to provide the parties
23 with a meaningful opportunity to address the issue or otherwise adjudicate the merits of the Cash
24 Collateral Motion, which formed the predicate basis for issuance of the Sequestration Order.
25 Under the circumstances, and until such time that this Court actually resolves the merits of the
26 Cash Collateral Motion, it is premature and highly prejudicial to require the forced liquidation of
27 the ERISA-qualified Profit-Sharing Plan, which will have significant and unintended tax
28 consequences for Defendant or the Bankruptcy Estate.



1 **II. BACKGROUND FACTS**

2 **The Bankruptcy Case and Related Proceedings**

3 On January 14, 2022 (the “Petition Date”), Defendant filed the Bankruptcy Case under
4 Title 11, Chapter 11 of the United States Code (the “Bankruptcy Case”). (Dkt. No. 1).

5 On June 30, 2022, Plaintiff filed a *Motion to Prohibit or Condition Debtor’s Use of Cash*
6 *Collateral and for Adequate Protection* (the “Cash Collateral Motion”), which among other
7 things, asserted that there was former community property cash in the aggregate amount of
8 \$1,007,109.63 at the time Donn died, and as such, the probate estate had an exclusive interest in
9 50% of these funds (\$503,554.82). (Dkt. No. 104). Curiously, however, the Cash Collateral
10 Motion, summarily and without any supporting legal analysis or authority, characterized those
11 funds that existed as of March 22, 2018 as “cash collateral” and sought “adequate protection”
12 with respect to those funds, although it was tacitly admitted that such funds did not exist as of the
13 Petition Date. (Dkt. No. 104).

14 Defendant opposed the Cash Collateral Motion on various grounds. (Dkt. No. 117).

15 First, in the nearly three-year period following the death of Mr. Schoenmann, Defendant
16 freely used all of the former community property funds, including cash, in reliance on the PMA,
17 which assigned all of this property to Plaintiff.

18 Second, in the Cash Collateral Motion, Plaintiff asserts that “[Defendant] and Donn had
19 \$526,501.63 community property funds on deposit in financial institutions” at the time of his
20 passing (2:14-15), of which \$396,704.32 was held in an account at UBS (x3820). (Dkt. No. 104-
21 1, p. 3, ¶ 9.c). However, this UBS account held the funds of the ERISA qualified Profit-Sharing
22 Plan. As such, there was less than \$130,000 in “community cash” when Donn passed away, all
23 of which was spent long before the Bankruptcy Case was filed.

24 Third, assuming *argumentum* that there was former community property cash on hand at
25 the time that Donn passed away, there is absolutely no evidence that such cash remained in
26 existence as of the date of the Bankruptcy Case. Indeed, counsel for Plaintiff specifically
27 acknowledged that “all of those accounts are gone, I think. Those are the accounts that, you
28 know, were in existence then.” (Dkt. No. 135, 41:6-8).



1 On July 29, 2022, at the initial hearing on the Cash Collateral Motion, the Court noted
2 that the factual presentation was “confusing” ... “[a]nd the math -- the numbers don’t match up.”
3 (Dkt. No. 135, 40:5-19). “So I still can’t figure out what the numbers...” (Dkt. No. 135 at
4 42:15).

5 In attempting to resolve the Cash Collateral Motion, the Court immediately turned to a
6 practical solution, which would allow for deferral of consideration of the merits:

7 **The Court:** “But listen, at the end of the day, if the debtor sets aside
8 \$503,000, are you okay?

9 **Mr. Lapping:** Yes

10 **The Court:** Now, we can make it all go away if there is consensus
11 about putting safely \$500,000 to protect Donn Schoenmann
12 for now ...”

13 23. Defendant argued that the Court was being asked to make a decision in a “factual
14 void;” the Court acknowledged that there had been no factual showing. (Dkt. No. 135, 48:22-
15 49:11; 50:4-9). However, the Court asserted its inherent authority to freeze funds to preserve the
16 *status quo* as follows:

17 “I can’t -- if I understand your point about a void record, I started by telling you
18 I couldn’t even make the numbers match. You’re referring to another number
19 that he didn’t complain about. He conceded some of his numbers are
20 confusing... So I don’t like to make findings based upon incomplete, confusing
21 facts. So I’ll maintain the *status quo* and you guys can figure out a way to
maintain at least 503,000 dollars to protect Mr. Lapping and not suffer -- not
make Ms. Schoenmann suffer some ERISA penalty.”

22 (Dkt. No. 135, 52:21-53:7).

23 Following the initial hearing, the Court agreed to defer the hearing, and prior to the
24 continued hearing on the Cash Collateral Motion, Plaintiff and Defendant submitted additional
25 briefs. (Dkt. Nos. 141, 144).

26 At the continued hearing on the Cash Collateral Motion, the Court was adamant that it
27 was deferring all substantive issues, but would sequester \$508,596 as an exercise of its
28 discretionary power over administration of the Chapter 11 estate. (Dkt. No. 155).



1 Thereafter, Defendant made an *Adequate Protection Proposal* (Dkt. No. 150), which this
2 Court accepted in entering the *Order Sequestering Specified Cash* (the “Sequestration Order”).
3 (Dkt. No. 156). Paragraph 5 of the Sequestration Order specifically provides that “[n]othing
4 contained in this Order or the relief granted by it shall be deemed to implicate or rule upon the
5 merits or substance of the contentions of the Debtor or of Stuart Schoenmann. This Order is
6 entered as an exercise of the Court’s plenary control over the administration of the above estate.”
7 (Dkt. No. 156).

8 There are two separate sources of funds subject to the Sequestration Order.

9 First, there are funds (\$388,959) in an ERISA qualified Profit-Sharing Plan (First
10 Republic account x1525) (the “Profit-Sharing Plan”), and since Defendant is older than 71 years
11 old, she is required to take mandatory distributions from the Plan, which are held in a segregated
12 account. Defendant applied to the Bankruptcy Court to subject the 2022 mandatory distribution
13 to the Sequestration Order (see Dkt. No. 315).

14 Second, there are funds (\$118,637) in an IRA Account (First Republic account x1556)
15 (the “Inherited IRA”) that Defendant inherited after John Aho passed away on December 18,
16 2018, which was nearly nine months after Donn passed away. (Dkt. No. 156).

17 On February 16, 2024, and in order to expedite administration of the Bankruptcy Case by
18 authorizing Trustee to administer or abandon the Profit-Sharing Plan and the Inherited IRA
19 without violating the terms of the Sequestration Order, Defendant filed a *Motion to Dissolve*
20 *Order Sequestered Specified Cash* (the “Motion to Dissolve”). (Dkt. No. 485). Ultimately, the
21 Bankruptcy Court elected not to adjudicate the merits of the relief requested by Defendant in the
22 Motion to Dissolve, but rather, directed Defendant to commence an Adversary Proceeding
23 against Defendants and seek the exact same relief requested in the motion.

24 The Profit-Sharing Plan is an ERISA qualified plan that includes a restriction on the
25 transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable
26 nonbankruptcy law. As such, the Profit-Sharing Plan was *never* property of the estate in the
27 Bankruptcy Case under section 541(c)(2) or any other provision of the Bankruptcy Code. See
28 11 U.S.C. § 541(c)(2); Patterson v. Shumate, 504 U.S. 753 (1992).



1 On October 4, 2023, and as a belt-and-suspenders approach, Defendant filed amended
2 *Schedule C: Property That You Claim as Exempt*, and in relevant part, claimed an exemption in
3 the entire amount (\$340,519.22) of the Profit-Sharing Plan pursuant to California Code of Civil
4 Procedure §§ 704.115(a)(3), (b), (e) (the “Profit-Sharing Plan Exemption”). (Dkt. No. 422).
5 Additionally, Plaintiff also specifically provided that the Profit Sharing Plan is “Not property of
6 the bankruptcy estate” on *Schedule C: Property That You Claim as Exempt*. (Dkt. No. 422).

7 On April 1, 2024, the Court entered an order approving Trustee’s abandonment of the
8 estate’s rights, title, and interest in the Profit-Sharing Plan. (Dkt. No. 526).

9 On May 15, 2024, the Plaintiff objected to Defendant’s claim of exemption in both the
10 Profit-Sharing Plan and the Inherited IRA asserting various legal arguments in support of their
11 position. (Dkt. No. 539).

12 Pursuant to a Stipulation executed between Defendant and Trustee, the deadline for
13 Trustee to file a timely objection to the Profit-Sharing Plan or the Inherited IRA was extended to
14 July 16, 2024. (Dkt. No. 533). After carefully considering the merits of the exemptions and
15 applicable law, Trustee intentionally declined to file any objection to Plaintiff’s claim of
16 exemptions in the Profit-Sharing Plan or the Inherited IRA. (See CM/ECF *generally*).

17 On December 11, 2024, the Court entered an order approving Trustee’s abandonment of
18 the estate’s rights, title, and interest in the Inherited IRA. (Dkt. No. 630).

19 **The Sequestration Order Adversary Proceeding.**

20 On August 16, 2024, and after the Court declined to adjudicate the merits of the Motion
21 to Dissolve, Defendant filed an Adversary Proceeding entitled Schoenmann v. Schoenmann et
22 al., Case No. 24-3035-DM, which sought limited declaratory and injunctive relief related to the
23 Sequestration Order (the “Sequestration Adversary Proceeding”). (AP Dkt. No. 1).

24 On December 9, 2024, the Court entered an *Order Denying Motion to Abstain and Stay*
25 *Adversary Proceeding* (the “Order Denying Abstention”) which in relevant part, denied
26 Plaintiffs’ request to remand the Sequestration Adversary Proceeding to be the Probate Court.
27 (AP Dkt. No. 16). Thereafter, the Court consolidated the Sequestration Adversary Proceeding
28 with the above-captioned matter. (AP Dkt. No. 17).



1 On December 19, 2024, Plaintiffs appealed the Order Denying Abstention, which is
2 currently pending before the United States District Court. (AP Dkt. No. 18).

3 On February 7, 2025, this Court entered an *Order Denying Motion for Stay Pending*
4 *Appeal*, which in relevant part, denied Plaintiffs' request for a stay pending appeal of the Order
5 Denying Abstention. (AP Dkt. No. 38). Plaintiffs never requested entry of a stay pending appeal
6 of the Order Denying Abstention from the United States District Court.

7 On September 3, 2025, this Court issued the *Memorandum Decision Regarding*
8 *Consolidated Adversary Proceedings and Remaining Major Issues in Bankruptcy Case* (the
9 "Memorandum Decision") [AP Dkt. No. 60] and the related *Order Abstaining from Deciding*
10 *Consolidated Adversary Proceedings, Dismissing Them and Granting Relief from Stay* (the
11 "Order") [AP Dkt. No. 61] in the above-captioned consolidated matter.

12 Defendant hereby seeks reconsideration of the Memorandum Decision and the Order.

13 **III. LEGAL ARGUMENT**

14 Pursuant to Federal Rule of Civil Procedure 59(e), made applicable to these proceedings
15 by Federal Rule of Bankruptcy Procedure 9023, this Court may alter or amend a judgment
16 previously entered in a proceeding. See Fed. R. Civ. P. 59(e). A motion for reconsideration
17 brought under Rule 59 can be granted based on "one or all of the following grounds: (1) to
18 correct manifest errors of law or fact upon which the judgment is based; (2) to allow the moving
19 party the opportunity to present newly discovered or previously unavailable evidence; (3) to
20 prevent manifest injustice; or (4) to reflect an intervening change in controlling law." In re Oak
21 Park Calabasas Condo. Ass'n, 302 B.R. 682, 683 (Bankr. C.D. Cal. 2003) *citing* McDowell v.
22 Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999), *cert. denied*, 529 U.S. 1082 (2000).

23 Further, Federal Rule of Bankruptcy Procedure 9023(b) provides in relevant part that
24 "[a] motion for a new trial or to alter or amend a judgment must be filed within 14 days after the
25 judgment is entered." Fed. R. Bankr. P. 9023(b). Since this Motion was filed within 14 days
26 after issuance of the Memorandum Decision and the Order, Defendants

27 ///

28 ///



1 **A. The Court Lacks Jurisdiction to Issue the Memorandum Decision and Order**

2 As a threshold matter, and as Defendant raised in the *Response Re: Order Regarding*
3 *Memorandum Decision* [AP Dkt No. 58], at this time, this Court lacks jurisdiction to abstain
4 from deciding those remaining matters in the consolidated Adversary Proceedings and granting
5 Relief from the Automatic Stay, such that the Probate Estate is now authorized to litigate these
6 remaining issues in the Probate Court.

7 Specifically, earlier this year, this Court rejected these exact same requests by the Probate
8 Estate, which is now currently on appeal before the United States District Court in the matter
9 entitled Schoenmann v. Rund et al., Case No. 3:25-cv-00142-EMC. Given that this Court
10 previously declined to abstain from adjudicating the consolidated Adversary Proceedings and
11 also declined to grant relief from the automatic stay (11 U.S.C. § 362(a)) for the Probate Estate
12 to litigate any of these issues in the Probate Court, which is currently on appeal, it is axiomatic
13 that this Court does not have jurisdiction to reverse its prior decision and issue relief consistent
14 with the Order. See Dkt. Nos. 16, 18, 38; see also RJN ¶ 4, Exh. W.

15 “The filing of a notice of appeal is an event of jurisdictional significance—it confers
16 jurisdiction on the court of appeals and divests the district court of its control over those aspects
17 of the case involved in the appeal.” Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58
18 (1982); see also In re Mirzai, 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999) (“if a district court would be
19 forbidden to act because of an appeal pending before the court of appeals, then both the
20 bankruptcy appellate panel and the bankruptcy court would be similarly constrained”).

21 The rule divesting lower courts of jurisdiction over aspects of a case involved in an
22 appeal “is judge-made doctrine designed to avoid the confusion and waste of time that might
23 flow from putting the same issues before two courts at the same time.” United States v. Thorp
24 (In re Thorp), 655 F.2d 997, 998 (9th Cir. 1981) (*quoting* 9 Moore, Fed. Prac. ¶ 203.11, n. 1).
25 This rule is not absolute. “For example, a district court has jurisdiction to take actions that
26 preserve the status quo during the pendency of an appeal, but may not finally adjudicate
27 substantial rights directly involved in the appeal.” In re Padilla, 222 F.3d 1184, 1190 (9th Cir.
28 2000) (citations omitted). Further, “[a]bsent a stay or supersedeas, the trial court also retains



jurisdiction to implement or enforce the judgment or order but may not alter or expand upon the judgment.” *Id.* (citations omitted) (emphasis added).

At this time, this Court did not have jurisdiction to issue the Memorandum Decision or the Order, which undoubtedly seeks to alter and amend the *Order Denying Renewed Motion for Relief from Stay* [Dkt. No. 629] and the Order Denying Abstention [AP Dkt. No. 16], and in effect, overturn these decisions, which are at the heart of the exact same issues that are currently on appeal before the United States District Court. As such, pursuant to Federal Rule of Civil Procedure 59, this Court should vacate the Memorandum Decision and the Order to correct manifest errors of law or fact upon which these decisions were issued.

B. The Court Lacks Jurisdiction Over the ERISA-Qualified Profit-Sharing Plan

Section 541(c)(2) of the Bankruptcy Code provides that “[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law is enforceable in a case under this title.” 11 U.S.C. § 541(c)(2). “The natural reading of [this] provision entitles a debtor to exclude from property of the estate any interest in a plan or trust that contains a transfer restriction enforceable under any relevant nonbankruptcy law.” *Patterson v. Shumate*, 504 U.S. 753, 758 (1992).

“The United States Supreme Court has held that an anti-alienation provision in an ERISA-qualified pension plan constitutes such a restriction for purposes of the [section] 541(c)(2) exclusion. *In re Rains*, 428 F.3d 893, 905-06 (9th Cir. 2005) (*citing Patterson*, 504 U.S. at 760)). “The exclusion is permissive rather than mandatory: ‘a debtor’s interest in an ERISA-qualified pension plan may be excluded from the property of the bankruptcy estate pursuant to [section] 541(c)(2)[.]’.” *Id.* As such, the “bankruptcy court lacks subject matter jurisdiction over excluded ERISA-qualified pension plan funds.” *In re Rains*, 428 at 905-06 (*citing In re McClellan*, 99 F.3d 1420, 1423 (7th Cir.1996)) (emphasis added).

Here, in the context of resolving the Sequestration Motion, this Court lacked subject matter jurisdiction over the ERISA-qualified Profit-Sharing Plan, and as such, lacked jurisdiction to issue any orders that deprived Defendant of her lawful rights in the ERISA-qualified Profit-Sharing Plan. Further, as the below dialogue suggests, the Court issued the Sequestration Order



1 as a placeholder to maintain the status quo, while the Court would later embark on the task of
2 resolving the Cash Collateral Motion, which remarkably never happened:

3 **The Court:** “The finding of the fact and the conclusion of law, the
4 issue is there is a substantial sum of money in various
5 accounts, and there are very, very serious charges claims
6 about it. Ms. Schoenmann is in bankruptcy, and she simply
7 can voluntarily agree not to make disbursements of this
8 amount of money for the time being while some of these
9 issues get straightened out.

10 There has to be some sorting out, whether it’s by a
11 separate adversary proceeding or new dec-relief action or
12 something. There has to be some resolution of the
13 arguments that Mr. Lapping has made and you’ve opposed.
14 And I don't have a solution for it at the moment, but I
15 know, as you both know, that bankruptcy courts have an
16 ability to figure out a way to maintain the status quo while
17 they determine the rights.

18 So the finding I would make is that Ms.
19 Schoenmann is in control of 380,000 dollars, and a good
20 portion of it, particularly the Aho trust portion, is highly
21 contested for a variety of reasons.

22 **Mr. St. James:** The Aho trust --

23 **The Court:** And it may be that the contest will fail, but it may be that it
24 won’t fail. And the way we maintain the status quo for the
25 short-term is to make sure it doesn’t go out the door. And
26 the owner of the money can simply agree that it won’t, and
27 that’s good enough for me,
28



1 So if you would like your client to reject it, then I
2 guess what I'll have to do is ask Mr. Lapping to bring a
3 new adversary proceeding, under some sort of restraining
4 order, to restrict Ms. Schoenmann's access to some of her
5 funds. And that's not my first choice of how we go about
6 doing this.

7 Again, I find that for you to insist that there be
8 findings is perfectly right, except it provide it does nothing
9 when the money isn't going anywhere. And you know --

10 **Mr. St. James:** I agree.

11 **The Court:** -- that it can't go anywhere.

12 **Mr. St. James:** Your Honor --

13 **The Court:** Okay. Because if she does --

14 **Mr. St. James:** -- ninety percent --

15 **The Court:** -- something that is inconsistent with her fiduciary duty as
16 the debtor-in-possession, she might make things worse than
17 they are now.

18 **Mr. St. James:** I agree. And that's why none of this made any sense to me.
19 But Your Honor, the vast majority of the actual cash that's
20 actually been disputed has always been in the profit-sharing
21 plan and has never gone anywhere. In fact, it's been
22 increased since the era when they claimed that they had an
23 interest in it.

24 So freezing those funds preserves the status quo and
25 addresses the only factual issue about which they have any
26 claim. The idea that somehow we have to impound real
27 cash dollars because they might succeed in an avoidance
28 action is just bizarre, Your Honor. It really is."



1 (Dkt. No. 155, 33:23-35:23).

2 This soliloquy aptly demonstrates the precise reason that the Sequestration Order was
3 entered – solely to preserve the status quo while the Court determined the respective rights of
4 Plaintiffs and Defendant related to the Cash Collateral Motion. However, it is abundantly clear
5 that Defendant never waived any of her rights in the ERISA-qualified Profit-Sharing Plan,
6 Defendant never consented to authorize this Court to exercise jurisdiction over the ERISA-
7 qualified Profit-Sharing Plan, and this Court never adjudicated the rights of the parties with
8 respect to the Cash Collateral Motion. (Dkt. No. 156).

9 Further, Paragraph 5 of the Sequestration Order specifically acknowledges that
10 “[n]othing contained in this Order or the relief granted by it shall be deemed to implicate or
11 rule upon the merits or substance of the contentions of the Debtor or of Stuart Schoenmann.
12 This Order is entered as an exercise of the Court’s plenary control over the administration of the
13 above estate.” (Dkt. No. 156, ¶ 5).

14 However, under these circumstances, this Court never had jurisdiction over the ERISA-
15 qualified Profit Sharing Plan, and as such, it is an extrajudicial act for the Court to order the
16 forced liquidation of the ERISA-qualified Profit-Sharing Plan. In re Rains, 428 F.3d at 905-06.

17 **C. Forced Liquidation of the Profit-Sharing Plan Will Create Avoidable, and**
18 **Unnecessary Tax Liability for Defendant or the Bankruptcy Estate**

19 The practical effect of the Memorandum Decision and the Order is that the forced
20 liquidation of the Profit-Sharing Plan and subsequent transfer of the net proceeds to the Clerk of
21 the United States Bankruptcy Court is that there is a taxable event in which Defendant would be
22 personally liability for income tax in 2025 in the aggregate amount of approximately \$167,112,
23 or alternatively, the Bankruptcy Estate could be liable for such tax consequences if the Profit-
24 Sharing Plan was deemed alienated or encumbered in 2022 upon issuance of the Sequestration
25 Order. See Crom Decl. ¶¶ 4-8. This harsh outcome creates a manifest injustice, as Defendant
26 (or the Bankruptcy Estate) has absolutely no recourse against any party if (when) Defendant is
27 determined the rightful owner of the Profit-Sharing Plan. As set forth below, there are
28 significantly less intrusive alternatives that this Court should consider rather than requiring the



1 forced liquidation of the Profit-Sharing Plan.

2 First, since this Bankruptcy Case will remain open for an extended period of time to
3 allow for final administration of the estate by the Trustee and resolution of every appeal taken by
4 the Probate Estate, this Court could simply allow the Sequestration Order to remain in full force
5 and effect, subject only to final disbursement of funds after a final decision from the Probate
6 Court (or other Court of competent jurisdiction) to the rightful owner of the funds. This
7 approach would not require any additional litigation in this Court, and in effect, offer the exact
8 same outcome contemplated by the Memorandum Decision and the Order, but avoids the
9 completely unnecessary forced liquidation of the ERISA-qualified Profit-Sharing Plan and
10 deposit of the funds with the Clerk of the Bankruptcy Court.

11 Second, as Defendant previously proposed in the *Response Re: Order Regarding*
12 *Memorandum Decision* [Dkt. No. 58], the Court could: (a) immediately dissolve the
13 Sequestration Order in its entirety without any restriction; (b) stay entry of the order for a period
14 of time (approximately 30 days); and (c) allow the Probate Estate to file appropriate pleadings
15 with a court of competent jurisdiction seeking an issuance of an injunction (TRO or Preliminary
16 Injunction) over use of the funds in the Profit-Sharing Plan and/or the Inherited IRA.

17 As this Court aptly recognized in the Memorandum Decision, “[t]here is no longer any
18 bankruptcy purpose to be served” (15:1-2) by maintaining the Sequestration Order, and to the
19 extent that the Probate Estate can demonstrate a cognizable claim, entitlement, or right to
20 ownership of the Profit-Sharing Plan, then undoubtedly the Probate Court would issue an
21 appropriate order to protect their interest in the funds. Further, and more importantly, if this
22 Court truly wants to abstain and allow all future proceedings to take place in the Probate Court,
23 then there is no legitimate purpose served by having funds maintained in the registry of the Clerk
24 of the United States Bankruptcy Court, which necessarily will require further orders from this
25 Court to transfer the funds to the rightful owner.

26 Third, given the infancy (and uncertainty) of the Chapter 11 Case, this Court issued the
27 Sequestration Order as a provisional remedy to maintain the status quo until such time that the
28 Cash Collateral Motion could be fully adjudicated. However, nearly three years later, and



1 notwithstanding conversion to Chapter 7, this Court has not adjudicated whether, as of the
2 Petition Date, the Probate Estate has any legitimate “cash collateral” rights in property of the
3 estate pursuant to the standard set forth in section 363(a). Until this Court actually determines
4 that the Probate Estate had “cash collateral” as of the Petition Date, which required some form
5 of adequate protection, as requested in the Cash Collateral Motion, it is premature for this Court
6 to require the forced liquidation of the ERISA-qualified Profit-Sharing Plan, which is not property
7 of the estate.

8 As such, prior to abstaining from adjudicating the remaining issues in the Bankruptcy
9 Case, this Court should adjudicate the merits of the Cash Collateral Motion, once and for all, and
10 issue appropriate orders regarding the respective rights of the parties, including the funds subject
11 to the Sequestration Order, which will avoid the unnecessary forced liquidation of the Profit-
12 Sharing Plan and the corresponding unavoidable tax consequences. Issues related to use of cash
13 collateral are core matters under the Bankruptcy Code (see 28 U.S.C. § 157(b)(2)(M)), and it is
14 patently unfair for this Court to specifically decline to adjudicate the merits of the Cash
15 Collateral Motion, but then bootstrap in the forced liquidation of the ERISA-qualified Profit-
16 Sharing Plan without any analysis or argument, which was gratuitously included as part of the
17 provisional Sequestration Order solely to maintain the status quo pending adjudication of the
18 Probate Estate’s claims under section 363.

19 Under the circumstances, procedural due process and the Bankruptcy Code demand that
20 this Court adjudicate the respective rights of Defendant and the Probate Estate in the Cash
21 Collateral Motion before endeavoring to dispossess Defendant of her lawful rights and
22 protections in the Profit-Sharing Plan, which is not property of the estate. How can the Court do
23 indirectly *vis-a-viz* the Sequestration Order (subject the Profit-Sharing Plan to jurisdiction of this
24 Court) what the Court (or the Trustee) cannot do directly? See 11 U.S.C. § 541(c)(2); Patterson,
25 504 U.S. at 753. The simple answer is that this Court does not have (and never had) subject
26 matter jurisdiction over the ERISA-qualified Profit-Sharing Plan, and taking any further act
27 requiring Defendant to liquidate such retirement account is a further extrajudicial act for which
28 this Court does not have valid subject matter jurisdiction to act.



1 **IV. CONCLUSION**

2 Based on the foregoing, Defendant respectfully requests that the Court enter an order
3 granting the Motion in its entirety, vacating the Memorandum Decision and Order, and granting
4 such other and further relief that is just and appropriate under the circumstances.

5 Alternatively, assuming *argumentum* that this Court determines that it has jurisdiction
6 notwithstanding the pending appeal, Defendant respectfully request that the Court reconsider and
7 amend the Memorandum Decision and Order and enter an appropriate order ensuring that
8 there is no adverse tax consequence to Defendant (or the Bankruptcy Estate) resultant from the
9 forced liquidation of the Profit-Sharing Plan pending resolution of ownership of this account in a
10 court of competent jurisdiction, and granting such other and further relief that is just and
11 appropriate under the circumstances.

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13 Dated: September 16, 2025

MEYER LAW GROUP, LLP

14 By: /s/ BRENT D. MEYER

15 Brent D. Meyer
16 Attorneys for Defendant
17 E. LYNN SCHOENMANN
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